

(1)

Sir Lyon Pilkington, Bar.
Appellant.

Mary Cuthbertson, Widow,
Respondent.

The Appellant's CASE.



In Consideration of a Marriage then intended betwixt the *March, 1698.*
Appellant Sir Lyon Pilkington, and Dame Lenox, his late
Wife, who was only Daughter and Heir of Cuthbert Har-
rison, Esq; and then Widow of one Mr. Smith.

Indentures of Lease and Release Tripartite, were executed *March 18, 1698.*
by the said Dame Lenox, then Lenox Smith of the First Part,
the Appellant of the Second Part, and Two Trustees therein
named of the Third Part, whereby the said Dame Lenox did
grant to the said Trustees her Manor of Acastor, Selby, and
several other Lands in the County of York, to several Uses in
the said Deed particularly mentioned with Remainder in Fee
to the Survivor.

In the Indenture of Release, there is a Covenant on the Part of the Appellant, *That the*
said Lenox should convert to her own Use, all or any of the Rents and Profits of the said Premises
after the Inter-marriage, during her Life, at her Pleasure: And reciting, That the said
Lenox was seized of certain Copyhold-Lands therein named, and ALSO POSSESSED
of a considerable Personal Estate, The Appellant did thereby Covenant to permit and suffer
the said Lenox from and after the Marriage to take and dispose the Rents and Profits of the said
Copyhold-Estate, and of all or any Part of the Personal Estate to such Uses as to her should seem
meet, without giving any Account thereof to the Appellant, and that the Appellant should not
during her Life, intermeddle therewith, without her Consent; shortly after the Execution of
this Deed, the Marriage was solemnized.

After the Marriage, other Indentures of Lease and Release were executed between the *July 20, 21, 1699.*
same Parties, for the further settling the Real Estate, in which there is a Covenant from
the Appellant to the like Effect as in the former Deed of the Eighteenth of *March,*
1698.

The Appellant's Lady being at York, distant from the Appellant, was prevailed upon to *July, 1706.*
execute a Deed-Poll, whereby she did give and grant to the Respondent Cuthbertson, all her
Goods, Chattels, and Personal Estate whatsoever; and the Respondent did execute another
Deed, declaring the said Deed-Poll was made to her in Trust for such Persons, as the said Dame
Lenox should appoint; and by a Third Deed of the same Date, the said Dame Lenox did
order the Respondent Cuthbertson to distribute and deliver her Personal Estate, consisting of
divers particulars therein mentioned, to several Persons in the said Deed; and gave to the
Charity-School Girls in St. Mary-Gate in York 30 l. and to the Poor of St. Martin's Parish 5 l.
but if her Personal Estate should fall short to make up the said Charities, proportionable
Abatements should be made, and if any Over-plus, it should be applied to augment the Cha-
rity proportionably, and shortly after died.

CUTHBERT

CUTHBERT HARRISON, Esquire, the Appellant's Wife's Father dying Intestate, after her Marriage with the Appellant, Administration of his Estate was granted to the said Dame Lenox, and after her Death the Appellant took Administration to his said Wife, and also took Administration *de bonis non*, &c. of the said Mr. Harrison.

The Appellant's Original Bill, and the Respondent's Cross Cause were for an Account of the Personal Estate of the said Dame Lenox, and

July 11, 1707. The Causes were first heard at the Rolls, but upon the Respondent's Appeal

Feb. 9, 1707. The Causes were Re-heard before the late Lord Chancellor, whereupon several Directions were given *AS TO WHAT SHOULD BE DEEMED THE SEPARATE ESTATE OF THE* said Dame Lenox, and of what she had Power to dispose by Vertue of her Marriage Agreement; and amongst other Things it is thereby declared, That what was her own at the Time of her Intermarriage with the Appellant, ought to be taken as Part of her separate Personal Estate: *But the Court declared, That the Personal Estate of Mr. Cuthbert Harrison, the Appellant's Wife's Father, or of any other Person, accrued to her after her Marriage with the Appellant, ought not to be taken as Part of her separate Personal Estate, or within her Disposal, by Vertue of her Marriage Agreement, but did belong to the Appellant: And, That in case she had disposed of her said Father's Personal Estate so accruing to her after her Marriage, The same ought to be made good to the Appellant, out of the Surplus of her own separate Personal Estate, before such Surplus be applied to the Increase of the Charities devised by her Deed of Gift, allowing what the said Dame Lenox paid for her said Father's Funeral Charges, or otherwise upon his Account; and did Order and Decree the same accordingly, and with these Directions it was referred to a Master to take the Account, with liberty to certify any Matter of difficulty, specially, for further Direction.*

May 26, 1709. The Master made his Report, by which it appeared that the separate Personal Estate of the Appellant's Wife amounted to *1062^l 8^s 6^d in the account* - and he thereby certified that it appeared by Proofs taken before him, That Cuthbert Harrison left in a Port-Mantle Trunk 1100*l*. in Silver, and 370 odd Guineas, which after his Death, the Appellant's Wife took into her Custody, and only gave the Appellant 500*l*. thereof, Part of which was laid out in building an House, that belonged to the said Dame Lenox; and with other Part, the Appellant paid the Funeral Charges of Mr Harrison, and that the Appellant's Wife kept the Remainder of the Money and Gold, and with Part of it paid several Debts she owed before her Marriage, amounting to 460*l*. 16*s*. 6*d*.

Novemb. 9, 1709. The Matter of the Special Report was heard afterwards and re-heard by the late Lord Chancellor, and upon the Re-hearing thereof

May 3, 1709. Upon the Respondents Petition, the Third of May last, the Court was pleased to order that the Appellant should be examined upon Interrogatories for discovery of what of the said Money in the Port-Mantle over and above the said 500*l*. was concealed from the Appellant, and did not come to the Appellant's Use.

Accordingly the Appellant was examined, and denied upon his Oath that any Part above the said 500*l*. came to his Use, but that the same was concealed from the Appellant till the Discovery thereof by Mrs. Bawtry's Depositions, (taken before the Master) which was long after the hearing the Cause.

Jan. 19, 1710. The Cause was heard before the Lord Keeper for a Final Decree, and as to the said Sum in the Port-Mantle, amounting to 1498*l*. 16*s*. 6*d*. the Appellant did not controvert the 500*l*. nor the said 460*l*. 16*s*. 6*d*. applied by his Wife in discharge of her Debts contracted before Marriage, and which ought to have been paid out of her separate Estate, but did only insist upon the Satisfaction for 538*l*. being the Overplus remaining, after the before-mentioned Sums deducted.

But the Respondent's Council insisting upon the Words of the Decree of the Ninth of February, 1707. viz. *That the Appellant's Satisfaction ought to be made good OUT OF THE SURPLUS OF THE SAID DAME LENOX SEPARATE PERSONAL ESTATE before such Surplus should be applied to the Increase of the Charities*, that by those Words the Appointments made by the said Dame Lenox, by the aforesaid Deed of the 11th of July 1706, were to take Place of the Appellant's Demand for the said concealed Money, and the Decree being so drawn up, the Court directed that the Appellant should have Satisfaction pursuant to the said Decree, the Consequence whereof is, that the Appellant who is
in

in the Nature of a Creditor to the said separate Estate, for the said concealed Money is postponed to the Voluntary Dispositions made by the Appellant's Wife, by the said Deed of the 11th of July, 1706.

The Appellant would have attempted to rectify the said Decree by a Re-hearing, but the Respondent who had all the Personal Estate of the Appellant's Wife in her Hands, and who knew there would be a deficiency to answer the Appellant's Demands, procured the said Decree to be signed and inrolled.

The Appellant at the Time of pronouncing the said Decree of the 9th of February, 1707, could not see the Consequence of the Direction, because

First the Appellant did not then know of any Concealment: And

Secondly, If there had been Sufficient of the Separate Personal Estate of the Appellant's Wife, to have answered the Appellant's Demand of the concealed Money, the Dispositions made by the said Dame *Lenox's* Deed (tho' Voluntary) might have been satisfied as well as the Appellant's Demand, but in the Event of the Account, it now appears that there will be no Surplus remaining for the Appellant's Satisfaction; so that it is become necessary to determine whether the Appellant is intitled to have a Prior Satisfaction as a Creditor for the said concealed Money, with respect to the Voluntary Donees (who are in the Nature of Legatees) and claim only by the said Deed of Appointment.

It may be objected that this is an Attempt to avoid the Charities.

The Appellant did never contend the Payment of the Charities, but by his Answer hath submitted that they should be paid, and is content, and by his Answer hath offered that the 30 *l.* and 5 *l.* should have a Preference, tho' it seems very probable that the Charities were only put in for a better Colour to the Deed.

The Charities will be equally avoided, if the Voluntary Dispositions take Place, for as that stands upon the Account which both Sides acquiesce in, there is like to be no Surplus to go in Augmentation of the Charities.

Wherefore, It is humbly hoped that the said Decree of the 7th of February, 1709, and the Order of the 19th of January last pursuant thereto, may be rectify'd, so as the Appellant may be admitted to have a Satisfaction for the said Money fraudulently concealed from the Appellant.

Spencer Comper.

Fr. Wilkinson.



The Appellant's

C A S E.

Sir Lyon Pilkington, Bar. Appellant.

Mary Cutbertsen, Widow, Respondent.

To be heard at the Bar of the House of Lords,
on Friday the Eleventh of May, 1711.